

Region 9 Land Division Standard Operating Procedures for Responding to FOIA Requests

Summary

Background. The attached SOP describes in detail the procedures LND will follow when FOIA requests are assigned to LND for response. It incorporates the Procedures for Responding to FOIA Requests the Agency issued on September 30, 2014 (http://www.epa.gov/irmpoli8/policies/CIO_2157-P-01.1.pdf). Below is a short summary of LND's SOPs.

Regional FOIA Distribution. FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#), a multi-agency electronic FOIA tracking system, and assigns the request to the Division that is most likely to house responsive records. The Region 9 FOIA Officer sends the request to the assigned Division's FOIA Coordinator with the deadline for responding to the request. Each division has its own internal assignment method; using that method, the Division FOIA Coordinator enters the staff and manager assignments into FOIAonline. If more than one Division has responsive records (a "Multi-Division FOIA"), the Region 9 FOIA Officer will assign the FOIA to the Division that is likely to have the majority of the responsive records as the "Action Office" and the other Division(s) as "Contributing Office(s)" in FOIAonline. The Action Office will be responsible for processing the request and preparing the response in coordination with the Contributing Office(s). The Contributing Office(s) must coordinate the Agency's response with the Action Office, including uploading responsive records into the system, before the FOIA response is finalized and transmitted to the requester. Divisions should contact the Region 9 FOIA Officer immediately if they have questions about the assignment of the "Action Office" and "Contributing Offices."

The Region 9 FOIA Officer coordinates Fee Waiver and Expedited Processing Requests with EPA Headquarters.

When a FOIA request is assigned to LND, it is sent to **LND's FOIA Coordinator (Ward Danner, a contractor in the RCRA Records Center)**, who then sends the request to the appropriate section chief and assigned staff for response.

If a request has been erroneously assigned to LND or should be assigned to another division, the LND FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

The following chart lists the LND offices and the FOIA topics that they cover along with the Section chief and assigned staff who respond to FOIA requests.

Office/Subject	Section Chief	Staff
LND-1-1/Hazardous Waste State Grants, General HW	Cheryl Nelson	Ward Danner

Facility Information, EPA ID numbers, etc.		
LND-2-1/Toxics; Children's Health; & Lead Abatement	Adrienne Priselac	Jacquelyn Hayes
LND-2-2/Pesticides	Pam Cooper	Chuck Kwan, Norman Calero
LND-2-3/Zero Waste, Pollution Prevention, Solid Waste Landfills, Tribal Solid Waste Issues, Recycling, Composting	Zoe Heller	As Assigned
LND-3-1/Tribal Grants; General Tribal Issues; any FOIA's that refer to or request Tribal information	Laura Ebbert	Kimberli Smith
LND-3-2/Pacific Islands Grants; general Pacific Islands Issues	John McCarroll	As Assigned
LND-3-3/Mexico Border Issues	Thomas Torres	As Assigned
LND-4-1/RCRA Cleanup Sites; PCB Cleanup Sites; Malibu High School	Steve Armann	As Assigned
LND-4-2/RCRA Permits; PCB Permits; HW Landfills, Kettleman	Barbara Gross	As Assigned
LND-4-3/Underground Storage Tank Sites and cleanup; Red Hill Site	Steve Linder	Chris Prokop

FOIA requests for LND are primarily handled by contractor staff in the RCRA Records Center. The contractor staff follow the SOPs detailed in *Complying with the Freedom of Information Act SOPs* dated May 2013 that are specified in the contract between Region 9 and the contractor.

The LND FOIA Coordinator will coordinate with LND Section Chiefs and assigned staff for records that are not in the RCRA Records Center and may be located within the LND program offices.

FOIA Processing. The LND FOIA Coordinator, with assistance from the assigned program staff, is responsible for ensuring that (1) an appropriate Assurance of Payment is obtained where necessary, (2) the statutory FOIA deadlines are met or an extension is obtained, and (3) the FOIA response is prepared for appropriate signature. If responsive records are found, the LND FOIA Coordinator and/or assigned staff lead coordinates review of those records with ORC to ensure that records are releasable. **Note:** There has been a significant change in the review and signature requirements for FOIA response letters. Every FOIA response, including full

releases of records, must be signed by a Division Director. For Multi-Division FOIAs, Division Directors for the Contributing Office(s) must complete an internal Records Release Authorization form which will be uploaded into FOIAonline but not for release to the public. In addition, all records released or being withheld (in whole or in part) must be reviewed by at least two knowledgeable individuals, including one manager/supervisor. LND also coordinates with ORC to ensure that an attorney is involved for record review when any records will be withheld. Those that have reviewed the records must complete an internal Records Review form which will be uploaded into FOIAonline. All of the template forms and letters can be found on the 9online FOIA intranet page at:

<http://intranet.epa.gov/9online/sites/foia>

***Centralized Email Searches.** Searches for responsive email records are performed centrally. Searches for responsive records in Outlook are conducted by OEI's eDiscovery group and searches of Lotus Notes are conducted by Region 9's technical search lead. Procedures for requesting a centralized search will be set forth in guidance entitled "*Region 9 Centralized Searches Which Require a Search of Microsoft Outlook and Lotus Notes Emails*", and posted on the 9online FOIA intranet page.

Uploading to FOIAonline. The LND FOIA Coordinator and/or staff lead are responsible for uploading into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline; (3) Records Review forms and, where applicable, a Records Release Authorization form; and (4) electronic versions of response letters and records.

Regional FOIA Oversight Region 9's overdue FOIA responses are reported every Monday to the Region's Senior Management Team. Therefore, it is important that LND FOIA Coordinator and/or lead staff provide up-to-date information, including withdrawals, extensions, and responses to the LND FOIA Coordinator, for timely input into the FOIAonline system **no later than noon on Friday of each week.**

LND Procedures for Responding to FOIA Requests

I. Overview

FOIA requests received by or assigned to the Region go through the **Region 9 FOIA Officer (IVRY JOHNSON)**, who manages [FOIAonline](#) and assigns the request to the Division that is most likely to house the responsive records with a deadline for responding to the request. The Region 9 FOIA Officer then provides the request to the FOIA Coordinator for that Division.

If more than one Division has responsive records (a “Multi-Division FOIA”), the Region 9 FOIA Officer will designate the Division that is likely to have the majority of the responsive records as the “Action Office” and will assign the other Division(s) as “Contributing Office(s)” in FOIAonline. The Action Office is responsible for coordinating the response letter, ensuring all records are uploaded into the system, and communicating with the requester about extensions. The Contributing Office(s) must coordinate the Agency’s response with the Action Office, including uploading responsive records into the system before the FOIA response is finalized and transmitted to the requester.

When a FOIA is actually assigned to LND, the FOIA is transmitted to the LND FOIA Coordinator (Ward Danner) in FOIAonline, who then sends the request to the appropriate section chief and assigned staff for response.

If the FOIA request is Multi-Divisional, LND will either be designated the Action Office or a Contributing Office, and LND must coordinate with the other Division(s) accordingly. Where LND is the Action Office, LND is responsible for preparing and signing the response letter, ensuring all records and forms are uploaded into the system, and communicating with the requester about extensions. Where LND is a Contributing Office, the LND FOIA Coordinator must ensure that all of LND’s responsive records and the internal Records Release Authorization form are uploaded into FOIAonline.

If a request has been erroneously assigned to LND or should be assigned to another division, the LND FOIA Coordinator will inform the Region 9 FOIA Officer immediately so that the request can be redirected to the appropriate Division for processing.

FOIA requests for LND are primarily handled by contractor staff in the RCRA Records Center. The contractor staff follow the SOPs detailed in *Complying with the Freedom of Information Act SOPs* dated May 2013 that are specified in the contract between Region 9 and the contractor.

The LND FOIA Coordinator will coordinate with LND Section Chiefs and assigned staff for records that are not in the RCRA Records Center and may be located within the LND program offices. Once the FOIA assignment is determined, the **LND FOIA Coordinator** enters into FOIAonline who is responsible for responding to the FOIA request.

All FOIA requests are managed through their lifecycle in FOIAonline, which provides for internal tracking and public viewing and searching of all agency responses. The Region 9 Senior Management Team receives status reports generated through FOIAonline to track FOIAs weekly on Mondays, including overdue responses. Therefore, it is important that all information concerning FOIA requests, including withdrawals, deadline extensions, scope changes, payment assurances, and response letters and records, are appropriately entered into the FOIAonline system no later than Friday of each week.

LND roles and responsibilities for responding to FOIA requests are described below. Regional roles and responsibilities are described only insofar as they are relevant to the LND FOIA Procedures. For other questions about FOIA and the response process, contact Ivry Johnson (7-4251), or Ward Danner (7-4596).

II. Processing FOIA Requests

1. **FOIA Assignment and Reporting:** Upon receipt of the FOIA request from the Region 9 FOIA Officer, the LND FOIA Coordinator will:
 - a. follow the standard operating procedures in *Complying with the Freedom of Information Act SOPs* dated May 2013 to search the RCRA Records Center for responsive documents and/or;
 - b. send the FOIA request to the LND manager/staff who would have responsive documents;
 - c. notify the Region 9 FOIA Officer if the request should be assigned to another Division in addition to LND;
 - d. notify the Region 9 FOIA Officer if the request does not belong to LND and should be reassigned to another Division;
 - e. notify the Region 9 FOIA Officer if another Division should be assigned the role of Action Office or Coordinating Office;
 - f. track LND FOIA deadlines and provide reminders to assigned Section Chief/Staff of upcoming FOIA deadlines;
 - g. coordinate with Region 9 FOIA Officer (per the R9 Interim Procedure for Centralized Searches of Microsoft Outlook Email) if extensive Microsoft Outlook searches are required;
 - h. upload all communications concerning FOIA requests and FOIA responses themselves into the FOIAonline system, including withdrawals, deadline extensions, scope changes, assurance of payments, and pdf versions of response letters and releasable records; and
 - i. coordinate with Region 9 FOIA Officer to close-out FOIA requests.

NOTE: ORC should always be informed of a FOIA if there is current ORC activity with regard to the subject of the FOIA. Where records may be withheld, ORC must be

involved with the document review and response. In other instances, staff can contact ORC for legal assistance with portions of the FOIA. These roles do not, however, transfer the responsibility for a FOIA to ORC.

1. Reviews records proposed for withholding.
2. Can assist program in obtaining extensions and narrowing scope of FOIA request.
3. Reviews any FOIA response letter providing a full or partial denial or initial denial of records for CBI.

2. Fee and Fee Waivers:

- a. If a FOIA requester is seeking a fee waiver, the Region 9 FOIA Officer will notify the LND FOIA Coordinator whether the fee waiver has been granted by Headquarters. Where a fee waiver has not been requested or has been denied, prepare a cost estimate for the search to be conducted and determine whether an assurance of payment is needed.
- b. An assurance of payment should be obtained from the FOIA requester if fees are expected to exceed either \$25 or a higher amount specified in the request. Unless a waiver of fees has been granted by Headquarters, the LND FOIA Coordinator should estimate the processing fee which will be charged as specified in 40 C.F.R. §2.107. Attorney review time (which includes time spent redacting) should be included in any fee estimate for commercial requesters. Search fees may apply even when no responsive records are identified or when no responsive records are disclosed to the requester.
- c. Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. "Search" time includes the time needed to determine if records are responsive. "Review" time includes the time needed to determine if any records (or portions of records) are exempt from release. Fees are calculated as follows (see both charts):

Type of Staff*	Charge per Quarter Hour
Clerical Staff	\$4 per ¼ hour
Professional Staff	\$7 per ¼ hour
Managerial Staff	\$10.25 per ¼ hour

Type of Requester	Fee Category		
	Search	Review	Duplication
Commercial	YES*	Yes	Yes
Educational	No	No	YES* (100 pages free)
Non-commercial scientific	No	No	YES* (100 pages free)
News Media	No	No	YES* (100 pages free)

All Others	YES*(first 2 hours free) No	Yes (100 pages free)
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* Note that entries with an asterisk cannot be charged if the Agency fails to comply with response deadlines.

Where assurance of payment is needed, use the Cost Worksheet to calculate estimated fees.¹ In appropriate cases, work with the requester to narrow the request before completing the Cost Worksheet. Send the Cost Worksheet to the Region 9 FOIA Officer who will send an assurance of payment letter to the requester through FOIAonline, which will toll the FOIA deadline until the requester submits a written assurance of payment. Once the written assurance of payment has been received, the Region 9 FOIA Officer will notify the LND FOIA Coordinator and adjust the deadline in FOIAonline. If the requester fails to provide an assurance of payment within the required timeframe, the FOIA request will be closed out and a letter to that effect will be sent by the Region 9 FOIA Officer to the requester.

3. Deadlines and Extensions: The LND FOIA Coordinator will confirm the response deadline within the FOIAonline system and determine if the response can be completed by the deadline (including, where applicable, attorney review time) as follows:
 - a) Where a FOIA response can be completed within the 20 working-day deadline, proceed to completing response.
 - b) Where a FOIA response cannot be completed within the 20 working-day deadline, first determine if “unusual circumstances” apply. “Unusual circumstance” exist when (1) records from field or other locations separate from the office processing the request must be searched; (2) voluminous records must be searched, collected and examined; and (3) another agency or two or more components of EPA must be consulted on the request. If “unusual circumstances” exist, EPA may extend the due date as follows:
 - (i) If the response can be completed within a 10 working-day extension, notify the requester in writing that unusual circumstances exist and provide the new due date.
 - (ii) If the response cannot be completed within a 10 working-day extension, provide the requester with the EPA FOIA Public Liaison contact information (available at the EPA FOIA Requester Service Center – Hotline number (202) 566-1667) and an opportunity to either (a) modify

¹ Region 9’s Cost Worksheet and other FOIA forms, templates and guidance can be found on 9Online at <http://intranet.epa.gov/9online/sites/foia>

the request so it can be processed within a 10 working-day extension, or
(b) agree to an extension for processing the original or modified request.

- c) Where a FOIA response cannot be completed within the 20 working-day deadline, and “unusual circumstances” do not exist, or if the due date has already been extended and additional time is needed to complete the response, negotiate an extension with the requester and provide the requester with the contact information for the EPA FOIA Public Liaison (available at the EPA FOIA Requester Service Center- Hotline number (202) 566-1667), who will assist in resolving any disputes. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible.
 - d) **In all cases involving an extension**, document in writing whether unusual circumstances exist, the requester’s agreement to an extension, or if there is no agreement, the new due date requested and the justification for the additional time necessary to complete the response, including the timeframes for providing phased responses of releasable records, leaving withholdings to the final response, and providing the EPA FOIA Public Liaison contact information, as appropriate. Provide all documentation regarding the FOIA deadline, extensions, and justifications for extensions and phased responses to the Region 9 FOIA Officer for entering into FOIAonline.
 - e) For Multi-Division FOIA requests, the Action Office is responsible for coordinating any requests for extension of time. The Action Office must work closely with all of the Contributing Offices, including ORC if records need to be reviewed or withheld, to ensure an adequate extension and that negotiated deadlines will be met.
4. Narrow Request where appropriate: Sometimes, requesters may seek more records than they really want or need. In such situations, the LND FOIA Coordinator or staff lead should work with a requester to narrow the scope of a FOIA request; consult with an appropriate ORC attorney when necessary to assist with narrowing a search. If a request is narrowed, written confirmation should be provided to the LND FOIA Coordinator to be entered into FOIAonline.
5. Record Search: Conduct a reasonable and adequate search to uncover all relevant records responsive to the FOIA request following this SOP and the procedures established in *Complying with the Freedom of Information Act SOPs* dated May 2013. Include ORC if advice is needed regarding the adequacy of a search or if ORC may have responsive documents. Unless otherwise specified, searches must be conducted in both hard copies (including offsite records if appropriate) and electronic versions of records. For FOIA requests requiring centralized email searches, detailed procedures will be provided in guidance posted on the 9online FOIA intranet page. Contact ORC for development of centralized email searches or for advice regarding the adequacy of a search.

6. **Record Review:** If any of the responsive records, or portions of records, may be subject to any FOIA exemption, provide those records to ORC for review. For any discretionary exemption (Exemptions 2, 5, 7(a), 8, and 9), along with the records, provide ORC the proposed exemption(s) and the basis for foreseeable harm if the record is released. Record review includes the following inquiries:
- a) Determine if gathered records are responsive to the request.
 - b) Determine whether any responsive records are or may be Claimed CBI. If so, use the Initial Denial template letter and follow the CBI substantiation process (see FOIA Response 7.c. below).²
 - c) Determine whether any responsive records, or portions of records, should be withheld pursuant to any FOIA exemption. If so, use the Partial or Full Denial template letter (see FOIA Response 7.d. or 7.e. below).
 - d) **All records, whether being released or withheld, must be reviewed by at least two knowledgeable individuals, one of whom must be a manager or supervisor. The two individuals must sign an internal Records Review form, which will be uploaded into FOIAonline but will not be released to the public.**
7. **FOIA Response:** A complete FOIA response includes gathering all responsive records, reviewing the records for releasability in consultation with ORC, and preparing the appropriate FOIA response letter. The LND FOIA Coordinator will upload into FOIAonline: (1) revisions to the scope of a FOIA request; (2) extension of a response deadline (with substantiation); (3) Records Review forms; and (4) electronic version of response letters and responsive LND records. **(NOTE: Even where ORC is helping to conduct record review for releasability, the Division remains responsible for ensuring that all responsive records and FOIA-related information is uploaded into FOIAonline).** If responsive documents are not in PDF format, the LND FOIA Coordinator and/or staff lead should work with the LND Administrative Staff to convert them to PDFs. There are very limited exceptions to processing FOIA responses electronically through FOIAonline, and these exceptions must be approved by Headquarters. Template correspondence for each type of FOIA response is available on the 9online intranet page: <http://intranet.epa.gov/9online/sites/foia>

Note: There has been a change in the signature requirements for FOIA response letters. Every FOIA response must be signed by a Division Director, including full releases. For Multi-Division FOIAs, the Division Director for the

² At this juncture, the LND FOIA Coordinator and/or staff lead may try to negotiate with the FOIA requester to narrow the scope of the FOIA to exclude those documents that do or may have a claim of CBI. Also, ORC may try to contact the document submitter informally to determine whether a claim of CBI will in fact be made.

Action Office signs the response letter and the Division Director(s) for the Contributing Office(s) must complete an internal Records Release Authorization form, which will be uploaded into the FOIAonline system, but will not be released to the public.

- a. Full Release: Prepare a Full Release response letter for LND Division Director's signature. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Provide pdf versions of the response letter and records to the LND FOIA Coordinator for delivery to the FOIA requester through FOIAonline. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Provide the cost form to the LND FOIA Coordinator for a bill to be prepared through the system.
- b) No records located: If no records are found, prepare a Certification of Search which describes the extent of the records search, and is signed by all employees that searched for records and a Section Chief. Prepare a "No Records" response letter with appeal rights for signature. Provide pdf versions of the "No Records" response and Certification of Search form to LND FOIA Coordinator for uploading onto FOIAonline. Note: The Certification of Search form is never sent to the FOIA requester but will be maintained in the internal part of the FOIAonline system.
- c) Initial denial for CBI: Prepare an Initial Denial letter with appeal rights to the FOIA Requester for signature by the Division Director. Provide a pdf version of the Initial Denial letter to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the Internal Records Review form signed by two individuals, at least one being a manager.

Using the OMB-approved substantiation template (available on the 9online FOIA page), send Request for Substantiation letter to the submitter of potential CBI. Inform submitter by telephone that substantiation letter has been mailed and to notify EPA if it is not received. The submitter has 15 days to substantiate the CBI claim. Review the submitter's substantiation and provide the Division's comments on the substantiation to ORC. Following review of the substantiation provided and any Division comments, ORC prepares a CBI final determination using the Headquarters' template (located in the OGC Library in the Lotus Notes database) for the Division Director's signature.

Provide a final response letter to the Requester following the expiration of the submitter's appeal period or resolution of any appeal.

- d) Partial Denial: If some of the records, or portions of records, responsive to the FOIA request are determined withholdable under one or more FOIA exemptions, prepare a Partial Denial response identifying withheld records and applicable

exemption(s) with appeal rights for signature by the Division Director. If a portion of a record is redacted, the exemption under which the redaction is made must be indicated on the record at the place of redaction. Include review of Partial Denial letter by ORC prior to signature by Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. For the releasable documents, collect them in electronic form where possible. Provide pdf versions of the Partial Denial, releasable documents, and cost form to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Note: For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.

- e) Full Denial: Prepare a Full Denial response identifying withheld records and applicable exemption(s) with appeal rights for signature by the Division Director. Include review of Full Denial letter by ORC prior to signature by Division Director. Where applicable, the response should indicate whether an invoice for fees will be forthcoming. Note: In the case of a Full Denial issued to a commercial requester, fees should only be charged for extensive review where the requester has been informed that such expenses may be incurred even without documents being produced. Provide pdf versions of the Full Denial letter and cost form to the LND FOIA Coordinator for delivery to the FOIA requester through the FOIAonline system. Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager. Note: For partial and full denials, a copy of all the withheld records (including un-redacted copies of redacted records) must be maintained in case of an appeal. The new HQ procedures require the withheld material to be uploaded into the non-public portion of FOIAonline. However, ORC is currently seeking HQ's permission to upload a place-holder document into FOIAonline that identifies who to contact for a copy of the withheld material instead of uploading all of the withheld records in FOIAonline.
- f) Phased Response: Where a large volume of documents is requested, the LND FOIA Coordinator and/or staff lead should discuss with the FOIA requester a phased approach for responding to the FOIA request. Only the final response should include information, where relevant, about withheld documents, fee invoice information, and appeal rights. Each phased release should indicate how many phased releases have been made to date. Provide pdf versions of all correspondence and documents for each phased response to the LND FOIA

Coordinator for delivery to the FOIA requester through the FOIAonline system.
Provide to the LND FOIA Coordinator the internal Records Review form signed by two individuals, at least one being a manager.

8. Limited Exceptions to Delivery through FOIAonline: The EPA Interim Procedures require all FOIA requests to be managed throughout their lifecycle in FOIAonline. Approval for exceptions to delivering responses through FOIAonline may be obtained from Headquarters by emailing the Agency FOIA Officer, Larry Gottesman at Gottesman.Larry@epa.gov for responses (1) involving very large volumes of paper records where conversion to e-format is not practical; or (2) that are subject to special handling requirements or policies (e.g. records containing personally identifiable information). These exceptions are reviewed on a case-by-case basis by Headquarters. The decision approving the exception must be uploaded onto FOIAonline. Where an exception has been approved, a placeholder document with contact information for obtaining a copy of the responsive records must be uploaded onto FOIAonline, and copies must be made readily available to future requesters.
9. Ensure all activity on FOIA requests, including deadline extensions and assurance of payment, are provided to the LND FOIA Coordinator and that FOIAonline includes accurate and current information.
10. The LND FOIA Coordinator uploads all communications concerning FOIA requests and responses into FOIAonline, including withdrawals, deadline extensions, scope changes, assurance of payments, internal records release forms, and pdf versions of response letters and releasable records.
11. The LND FOIA Coordinator will work with the Region 9 FOIA Officer to close-out FOIA requests.